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Hawthorne Locality Dist.  
Hawthorne, Nevada 21244

II

106TH CONGRESS  
1ST SESSION

S. 1445

To amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs.

IN THE SENATE OF THE UNITED STATES

JULY 27, 1999

Mr. KOHL (for himself and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Finance

# A BILL

To amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs.

1       *Be it enacted by the Senate and House of Representa-*

2 tives of the United States of America in Congress assembled,

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Patient Abuse Preven-  
5 tion Act".

## 6 SEC. 2. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE 7 OF NURSING FACILITY RESIDENTS

8 (a) NURSING FACILITY AND SKILLED NURSING FA-  
9 CILITY REQUIREMENTS.—

4                   “(8) SCREENING OF NURSING FACILITY WORK-  
5                   ERS.—

6                             “(A) BACKGROUND CHECKS ON APPLI-  
7                             CANTS.—Subject to subparagraph (B)(ii), be-  
8                             fore hiring a nursing facility worker, a nursing  
9                             facility shall—

1                     “(IV) provide any other identi-  
2                     fication information the Secretary  
3                     may specify in regulation;

4                     “(iii) initiate a check of the data col-  
5                     lection system established under section  
6                     1128E in accordance with regulations pro-  
7                     mulgated by the Secretary to determine  
8                     whether such system contains any disquali-  
9                     fying information with respect to such  
10                    worker; and

11                    “(iv) if that system does not contain  
12                    any such disqualifying information—

13                    “(I) request that the State ini-  
14                    tiate a State and national criminal  
15                    background check on such worker in  
16                    accordance with the provisions of sub-  
17                    section (e)(8); and

18                    “(II) furnish to the State the in-  
19                    formation described in subclauses (II)  
20                    through (IV) of clause (ii) not more  
21                    than 7 days (excluding Saturdays,  
22                    Sundays, and legal public holidays  
23                    under section 6103(a) of title 5,  
24                    United States Code) after completion

of the check against the system initiated under clause (iii).

“(B) PROHIBITION ON HIRING OF ABUSIVE  
WORKERS.—

“(i) IN GENERAL.—A nursing facility may not knowingly employ any nursing facility worker who has any conviction for a relevant crime or with respect to whom a finding of patient or resident abuse has been made.

**“(ii) PROVISIONAL EMPLOYMENT.—**

After complying with the requirements of clauses (i), (ii), and (iii) of subparagraph (A), a nursing facility may provide for a provisional period of employment for a nursing facility worker pending completion of the check against the data collection system described under subparagraph (A)(iii) and the background check described under subparagraph (A)(iv). Such facility shall maintain direct supervision of the worker during the worker's provisional period of employment.

1 stance in which the facility determines that a  
2 nursing facility worker has committed an act of  
3 resident neglect or abuse or misappropriation of  
4 resident property in the course of employment  
5 by the facility.

6 “(D) USE OF INFORMATION.—

7 “(i) IN GENERAL.—A nursing facility  
8 that obtains information about a nursing  
9 facility worker pursuant to clauses (iii) and  
10 (iv) of subparagraph (A) may use such in-  
11 formation only for the purpose of deter-  
12 mining the suitability of the worker for  
13 employment.

14 “(ii) IMMUNITY FROM LIABILITY.—A  
15 nursing facility that, in denying employ-  
16 ment for an applicant (including during  
17 the period described in subparagraph  
18 (B)(ii)), reasonably relies upon information  
19 about such applicant provided by the State  
20 pursuant to subsection (e)(8) or section  
21 1128E shall not be liable in any action  
22 brought by such applicant based on the  
23 employment determination resulting from  
24 the information.

1                     “(iii) CRIMINAL PENALTY.—Whoever  
2                     knowingly violates the provisions of clause  
3                     (i) shall be fined in accordance with title  
4                     18, United States Code, imprisoned for not  
5                     more than 2 years, or both.

6                     “(E) CIVIL PENALTY.—

7                     “(i) IN GENERAL.—A nursing facility  
8                     that violates the provisions of this para-  
9                     graph shall be subject to a civil penalty in  
10                    an amount not to exceed—

11                    “(I) for the first such violation,  
12                    \$2,000; and

13                    “(II) for the second and each  
14                    subsequent violation within any 5-year  
15                    period, \$5,000.

16                    “(ii) KNOWING RETENTION OF WORK-  
17                    ER.—In addition to any civil penalty under  
18                    clause (i), a nursing facility that—

19                    “(I) knowingly continues to em-  
20                    ploy a nursing facility worker in viola-  
21                    tion of subparagraph (A) or (B); or

22                    “(II) knowingly fails to report a  
23                    nursing facility worker under subpara-  
24                    graph (C); shall be subject to a civil  
25                    penalty in an amount not to exceed

5                   “(F) DEFINITIONS.—In this paragraph:

1 evant crime or a finding of patient or resi-  
2 dent abuse.

3 “(iii) FINDING OF PATIENT OR RESI-  
4 DENT ABUSE.—The term ‘finding of pa-  
5 tient or resident abuse’ means any sub-  
6 stantiated finding by a State agency under  
7 subsection (g)(1)(C) or a Federal agency  
8 that a nursing facility worker has  
9 committed—

10 “(I) an act of patient or resident  
11 abuse or neglect or a misappropriation  
12 of patient or resident property; or

13 “(II) such other types of acts as  
14 the Secretary may specify in regula-  
15 tions.

16 “(iv) NURSING FACILITY WORKER.—  
17 The term ‘nursing facility worker’ means  
18 any individual (other than any volunteer)  
19 that has direct access to a patient of a  
20 nursing facility under an employment or  
21 other contract, or both, with such facility.  
22 Such term includes individuals who are li-  
23 censed or certified by the State to provide  
24 such services, and nonlicensed individuals  
25 providing such services, as defined by the

4 (2) MEDICARE PROGRAM.—Section 1819(b) of  
5 the Social Security Act (42 U.S.C. 1395i-3(b)) is  
6 amended by adding at the end the following:

7                   “(8) SCREENING OF SKILLED NURSING FACIL-  
8                   ITY WORKERS.—

1 to request the search and exchange of  
2 criminal records;

3 “(III) provide in person a copy of  
4 the worker’s fingerprints; and

5 “(IV) provide any other identi-  
6 fication information the Secretary  
7 may specify in regulation;

8 “(iii) initiate a check of the data col-  
9 lection system established under section  
10 1128E in accordance with regulations pro-  
11 mulgated by the Secretary to determine  
12 whether such system contains any disquali-  
13 fying information with respect to such  
14 worker; and

15 “(iv) if that system does not contain  
16 any such disqualifying information—

17 “(I) request that the State ini-  
18 tiate a State and national criminal  
19 background check on such worker in  
20 accordance with the provisions of sub-  
21 section (e)(6); and

22 “(II) furnish to the State the in-  
23 formation described in subclauses (II)  
24 through (IV) of clause (ii) not more  
25 than 7 days (excluding Saturdays,

Sundays, and legal public holidays under section 6103(a) of title 5, United States Code) after completion of the check against the system initiated under clause (iii).

**“(B) PROHIBITION ON HIRING OF ABUSIVE**

## WORKERS.—

“(i) IN GENERAL.—A skilled nursing facility may not knowingly employ any skilled nursing facility worker who has any conviction for a relevant crime or with respect to whom a finding of patient or resident abuse has been made.

“(ii) PROVISIONAL EMPLOYMENT.—

After complying with the requirements of clauses (i), (ii), and (iii) of subparagraph (A), a skilled nursing facility may provide for a provisional period of employment for a skilled nursing facility worker pending completion of the check against the data collection system described under subparagraph (A)(iii) and the background check described under subparagraph (A)(iv). Such facility shall maintain direct super-

1 vision of the covered individual during the  
2 worker's provisional period of employment.

3       “(C) REPORTING REQUIREMENTS.—A  
4 skilled nursing facility shall report to the State  
5 any instance in which the facility determines  
6 that a skilled nursing facility worker has com-  
7 mitted an act of resident neglect or abuse or  
8 misappropriation of resident property in the  
9 course of employment by the facility.

10     “(D) USE OF INFORMATION.—

11       “(i) IN GENERAL.—A skilled nursing  
12 facility that obtains information about a  
13 skilled nursing facility worker pursuant to  
14 clauses (iii) and (iv) of subparagraph (A)  
15 may use such information only for the pur-  
16 pose of determining the suitability of the  
17 worker for employment.

18       “(ii) IMMUNITY FROM LIABILITY.—A  
19 skilled nursing facility that, in denying em-  
20 ployment for an applicant (including dur-  
21 ing the period described in subparagraph  
22 (B)(ii)), reasonably relies upon information  
23 about such applicant provided by the State  
24 pursuant to subsection (e)(6) or section  
25 1128E shall not be liable in any action

brought by such applicant based on the employment determination resulting from the information.

“(iii) CRIMINAL PENALTY.—Whoever knowingly violates the provisions of clause (i) shall be fined in accordance with title 18, United States Code, imprisoned for not more than 2 years, or both.

“(E) CIVIL PENALTY.—

“(i) IN GENERAL.—A skilled nursing facility that violates the provisions of this paragraph shall be subject to a civil penalty in an amount not to exceed—

“(I) for the first such violation,

\$2,000; and

“(II) for the second and each subsequent violation within any 5-year period, \$5,000.

“(ii) KNOWING RETENTION OF WORKER.—In addition to any civil penalty under clause (i), a skilled nursing facility that—

“(I) knowingly continues to employ a skilled nursing facility worker in violation of subparagraph (A) or (B); or

1                             “(II) knowingly fails to report a  
2                             skilled nursing facility worker under  
3                             subparagraph (C);

4                             shall be subject to a civil penalty in an  
5                             amount not to exceed \$5,000 for the first  
6                             such violation, and \$10,000 for the second  
7                             and each subsequent violation within any  
8                             5-year period.

9                             “(F) DEFINITIONS.—In this paragraph:

10                             “(i) CONVICTION FOR A RELEVANT  
11                             CRIME.—The term ‘conviction for a rel-  
12                             evant crime’ means any Federal or State  
13                             criminal conviction for—

14                             “(I) any offense described in  
15                             paragraphs (1) through (4) of section  
16                             1128(a); and

17                             “(II) such other types of offenses  
18                             as the Secretary may specify in regu-  
19                             lations, taking into account the sever-  
20                             ity and relevance of such offenses, and  
21                             after consultation with representatives  
22                             of long-term care providers, represent-  
23                             atives of long-term care employees,  
24                             consumer advocates, and appropriate  
25                             Federal and State officials.

## 1                   “(ii) DISQUALIFYING INFORMATION.—

2                   The term ‘disqualifying information’ means  
3                   information about a conviction for a rel-  
4                   evant crime or a finding of patient or resi-  
5                   dent abuse.6                   “(iii) FINDING OF PATIENT OR RESI-  
7                   DENT ABUSE.—The term ‘finding of pa-  
8                   tient or resident abuse’ means any sub-  
9                   stantiated finding by a State agency under  
10                   subsection (g)(1)(C) or a Federal agency  
11                   that a skilled nursing facility worker has  
12                   committed—13                   “(I) an act of patient or resident  
14                   abuse or neglect or a misappropriation  
15                   of patient or resident property; or16                   “(II) such other types of acts as  
17                   the Secretary may specify in regula-  
18                   tions.19                   “(iv) SKILLED NURSING FACILITY  
20                   WORKER.—The term ‘skilled nursing facil-  
21                   ity worker’ means any individual (other  
22                   than any volunteer) that has direct access  
23                   to a patient of a skilled nursing facility  
24                   under an employment or other contract, or  
25                   both, with such facility. Such term includes

1 individuals who are licensed or certified by  
2 the State to provide such services, and  
3 nonlicensed individuals providing such  
4 services, as defined by the Secretary, in-  
5 cluding nurse assistants, nurse aides, home  
6 health aides, and personal care workers  
7 and attendants.”.

8 (b) STATE REQUIREMENTS.—

9 (1) MEDICAID PROGRAM.—

10 (A) EXPANSION OF STATE REGISTRY TO  
11 COLLECT INFORMATION ABOUT NURSING FACIL-  
12 ITY EMPLOYEES OTHER THAN NURSE AIDES.—  
13 Section 1919 of the Social Security Act (42  
14 U.S.C. 1396r) is amended—

15 (i) in subsection (e)(2)—

16 (I) in the paragraph heading, by  
17 striking "NURSE AIDE REGISTRY" and  
18 inserting "NURSING FACILITY EM-  
19 PLOYEE REGISTRY";

20 (II) in subparagraph (A)—

21 (aa) by striking "By not  
22 later than January 1, 1989, the"  
23 and inserting "The";

24 (bb) by striking "a registry  
25 of all individuals" and inserting

1                             “a registry of (I) all individuals”;  
2                             and

3                             (cc) by inserting before the  
4                             period “, and (II) all other nurs-  
5                             ing facility employees with re-  
6                             spect to whom the State has  
7                             made a finding described in sub-  
8                             paragraph (B)”;

9                             (III) in subparagraph (B), by  
10                             striking “involving an individual listed  
11                             in the registry” and inserting “involv-  
12                             ing a nursing facility employee”; and

13                             (IV) in subparagraph (C), by  
14                             striking “nurse aide” and inserting  
15                             “nursing facility employee or appli-  
16                             cant for employment”; and

17                             (ii) in subsection (g)(1)—  
18                             (I) in subparagraph (C)—

19                             (aa) in the first sentence, by  
20                             striking “nurse aide” and insert-  
21                             ing “nursing facility employee”;  
22                             and

23                             (bb) in the third sentence,  
24                             by striking “nurse aide” each

1 place it appears and inserting  
2 “nursing facility employee”; and  
3 (II) in subparagraph (D), by  
4 striking “nurse aide” each place it ap-  
5 pears and inserting “nursing facility  
6 employee”.

7 (B) FEDERAL AND STATE REQUIREMENT  
8 TO CONDUCT BACKGROUND CHECKS.—Section  
9 1919(e) of the Social Security Act (42 U.S.C.  
10 1396r(e)) is amended by adding at the end the  
11 following:

12 “(8) FEDERAL AND STATE REQUIREMENTS  
13 CONCERNING CRIMINAL BACKGROUND CHECKS ON  
14 NURSING FACILITY EMPLOYEES.—

15 “(A) IN GENERAL.—Upon receipt of a re-  
16 quest by a nursing facility pursuant to sub-  
17 section (b)(8) that is accompanied by the infor-  
18 mation described in subclauses (II) through  
19 (IV) of subsection (b)(8)(A)(ii), a State, after  
20 checking appropriate State records and finding  
21 no disqualifying information (as defined in sub-  
22 section (b)(8)(F)(ii)), shall submit such request  
23 and information to the Attorney General and  
24 shall request the Attorney General to conduct a  
25 search and exchange of records with respect to

1 the individual as described in subparagraph  
2 (B).

3           “(B) SEARCH AND EXCHANGE OF  
4 RECORDS BY ATTORNEY GENERAL.—Upon re-  
5 ceipt of a submission pursuant to subparagraph  
6 (A), the Attorney General shall direct a search  
7 of the records of the Federal Bureau of Inves-  
8 tigation for any criminal history records cor-  
9 responding to the fingerprints or other positive  
10 identification information submitted. The Attor-  
11 ney General shall provide any corresponding in-  
12 formation resulting from the search to the  
13 State.

14           “(C) STATE REPORTING OF INFORMATION  
15 TO NURSING FACILITY.—Upon receipt of the in-  
16 formation provided by the Attorney General  
17 pursuant to subparagraph (B), the State  
18 shall—

19               “(i) review the information to deter-  
20 mine whether the individual has any con-  
21 viction for a relevant crime (as defined in  
22 subsection (b)(8)(F)(i));  
23               “(ii) report to the nursing facility the  
24 results of such review; and

1                     “(iii) in the case of an individual with  
2                     a conviction for a relevant crime, report  
3                     the existence of such conviction of such in-  
4                     dividual to the database established under  
5                     section 1128E.

6                     “(D) FEES FOR PERFORMANCE OF CRIMI-  
7                     NAL BACKGROUND CHECKS.—

8                     “(i) AUTHORITY TO CHARGE FEES.—  
9                     “(I) ATTORNEY GENERAL.—The  
10                    Attorney General may charge a fee to  
11                    any State requesting a search and ex-  
12                    change of records pursuant to this  
13                    paragraph and subsection (b)(8) for  
14                    conducting the search and providing  
15                    the records. The amount of such fee  
16                    shall not exceed the lesser of the ac-  
17                    tual cost of such activities or \$50.  
18                    Such fees shall be available to the At-  
19                    torney General, or, in the Attorney  
20                    General’s discretion, to the Federal  
21                    Bureau of Investigation, until ex-  
22                    pended.

23                    “(II) STATE.—A State may  
24                    charge a nursing facility a fee for ini-  
25                    tiating the criminal background check

under this paragraph and subsection (b)(8), including fees charged by the Attorney General, and for performing the review and report required by subparagraph (C). The amount of such fee shall not exceed the actual cost of such activities.

“(ii) PROHIBITION ON CHARGING APPLICANTS OR EMPLOYEES.—An entity may not impose on an applicant for employment or an employee any charges relating to the performance of a background check under this paragraph.

“(E) REGULATIONS.—

“(i) IN GENERAL.—In addition to the Secretary’s authority to promulgate regulations under this title, the Attorney General, in consultation with the Secretary, may promulgate such regulations as are necessary to carry out the Attorney General’s responsibilities under this paragraph and subsection (b)(8), including regulations regarding the security, confidentiality, accuracy, use, destruction, and dis-

1 semination of information, audits and rec-  
2 ordkeeping, and the imposition of fees.

18                   “(F) REPORT.—Not later than 2 years  
19                   after the date of enactment of this paragraph,  
20                   the Attorney General shall submit a report to  
21                   Congress on—

1                         “(ii) the disposition of such requests;

2                         and

3                         “(iii) the cost of responding to such

4                         requests.”.

5                         (2) MEDICARE PROGRAM.—

6                         (A) EXPANSION OF STATE REGISTRY TO

7                         COLLECT INFORMATION ABOUT SKILLED NURS-

8                         ING FACILITY EMPLOYEES OTHER THAN NURSE

9                         AIDES.—Section 1819 of the Social Security

10                         Act (42 U.S.C. 1395i-3) is amended—

11                         (i) in subsection (e)(2)—

12                         (I) in the paragraph heading, by

13                         striking “NURSE AIDE REGISTRY” and

14                         inserting “SKILLED NURSING CARE

15                         EMPLOYEE REGISTRY”;

16                         (II) in subparagraph (A)—

17                         (aa) by striking “By not

18                         later than January 1, 1989, the”

19                         and inserting “The”;

20                         (bb) by striking “a registry

21                         of all individuals” and inserting

22                         “a registry of (I) all individuals”;

23                         and

24                         (cc) by inserting before the

25                         period “, and (II) all other

skilled nursing facility employees with respect to whom the State has made a finding described in subparagraph (B)";

(III) in subparagraph (B), by striking “involving an individual listed in the registry” and inserting “involving a skilled nursing facility employee”; and

(IV) in subparagraph (C), by striking “nurse aide” and inserting “skilled nursing facility employee or applicant for employment”; and

(ii) in subsection (g)(1)—

(1) in subparagraph (C)—  
(aa) in the first sentence, by  
striking “nurse aide” and insert-  
ing “skilled nursing facility em-  
ployee”; and

(bb) in the third sentence, by striking “nurse aide” each place it appears and inserting “skilled nursing facility employee”; and

(II) in subparagraph (D), by striking "nurse aide" each place it appears and inserting "skilled nursing facility employee".

(B) FEDERAL AND STATE REQUIREMENT

TO CONDUCT BACKGROUND CHECKS.—Section 1819(e) of the Social Security Act (42 U.S.C. 1395i–3(e)) is amended by adding at the end the following:

10                   “(6) FEDERAL AND STATE REQUIREMENTS  
11                   CONCERNING CRIMINAL BACKGROUND CHECKS ON  
12                   SKILLED NURSING FACILITY EMPLOYEES.—

“(A) IN GENERAL.—Upon receipt of a request by a skilled nursing facility pursuant to subsection (b)(8) that is accompanied by the information described in subclauses (II) through (IV) of subsection (b)(8)(A)(ii), a State, after checking appropriate State records and finding no disqualifying information (as defined in subsection (b)(8)(F)(ii)), shall submit such request and information to the Attorney General and shall request the Attorney General to conduct a search and exchange of records with respect to the individual as described in subparagraph (B).

1                     “(B) SEARCH AND EXCHANGE OF  
2 RECORDS BY ATTORNEY GENERAL.—Upon re-  
3 ceipt of a submission pursuant to subparagraph  
4 (A), the Attorney General shall direct a search  
5 of the records of the Federal Bureau of Inves-  
6 tigation for any criminal history records cor-  
7 responding to the fingerprints or other positive  
8 identification information submitted. The Attor-  
9 ney General shall provide any corresponding in-  
10 formation resulting from the search to the  
11 State.

12                     “(C) STATE REPORTING OF INFORMATION  
13 TO SKILLED NURSING FACILITY.—Upon receipt  
14 of the information provided by the Attorney  
15 General pursuant to subparagraph (B), the  
16 State shall—

17                         “(i) review the information to deter-  
18 mine whether the individual has any con-  
19 viction for a relevant crime (as defined in  
20 subsection (b)(8)(F)(i));

21                         “(ii) report to the skilled nursing fa-  
22 cility the results of such review; and

23                         “(iii) in the case of an individual with  
24 a conviction for a relevant crime, report  
25 the existence of such conviction of such in-

1                   dividual to the database established under  
2                   section 1128E.

3                   “(D) FEES FOR PERFORMANCE OF CRIMI-  
4                   NAL BACKGROUND CHECKS.—

5                   “(i) AUTHORITY TO CHARGE FEES.—

6                   “(I) ATTORNEY GENERAL.—The  
7                   Attorney General may charge a fee to  
8                   any State requesting a search and ex-  
9                   change of records pursuant to this  
10                  paragraph and subsection (b)(8) for  
11                  conducting the search and providing  
12                  the records. The amount of such fee  
13                  shall not exceed the lesser of the ac-  
14                  tual cost of such activities or \$50.  
15                  Such fees shall be available to the At-  
16                  torney General, or, in the Attorney  
17                  General’s discretion, to the Federal  
18                  Bureau of Investigation until ex-  
19                  pended.

20                  “(II) STATE.—A State may  
21                  charge a skilled nursing facility a fee  
22                  for initiating the criminal background  
23                  check under this paragraph and sub-  
24                  section (b)(8), including fees charged  
25                  by the Attorney General, and for per-

1 forming the review and report re-  
2 quired by subparagraph (C). The  
3 amount of such fee shall not exceed  
4 the actual cost of such activities.

5 “(ii) PROHIBITION ON CHARGING AP-  
6 PLICANTS OR EMPLOYEES.—An entity may  
7 not impose on an applicant for employment  
8 or an employee any charges relating to the  
9 performance of a background check under  
10 this paragraph.

11 “(E) REGULATIONS.—

12 “(i) IN GENERAL.—In addition to the  
13 Secretary’s authority to promulgate regula-  
14 tions under this title, the Attorney Gen-  
15 eral, in consultation with the Secretary,  
16 may promulgate such regulations as are  
17 necessary to carry out the Attorney Gen-  
18 eral’s responsibilities under this paragraph  
19 and subsection (b)(9), including regula-  
20 tions regarding the security confidentiality,  
21 accuracy, use, destruction, and dissemina-  
22 tion of information, audits and record-  
23 keeping, and the imposition of fees.

24 “(ii) APPEAL PROCEDURES.—The At-  
25 torney General, in consultation with the

Secretary, shall promulgate such regulations as are necessary to establish procedures by which an applicant or employee may appeal or dispute the accuracy of the information obtained in a background check conducted under this paragraph. Appeals shall be limited to instances in which an applicant or employee is incorrectly identified as the subject of the background check, or when information about the applicant or employee has not been updated to reflect changes in the applicant's or employee's criminal record.

“(F) REPORT.—Not later than 2 years after the date of enactment of this paragraph, the Attorney General shall submit a report to Congress on—

“(i) the number of requests for searches and exchanges of records made under this section;

“(ii) the disposition of such requests;

and

“(iii) the cost of responding to such requests.”.

1 (c) APPLICATION TO OTHER ENTITIES PROVIDING  
2 LONG-TERM CARE SERVICES.—

5 (A) in paragraph (65), by striking the pe-  
6 riod and inserting “; and”; and

7 (B) by inserting after paragraph (65) the  
8 following:

9               “(66) provide that any entity that is eligible to  
10              be paid under the State plan for providing long-term  
11              care services for which medical assistance is avail-  
12              able under the State plan to individuals requiring  
13              long-term care complies with the requirements of  
14              subsections (b)(8) and (e)(8) of section 1919.”.

18 "APPLICATION OF SKILLED NURSING FACILITY PREVEN-  
19 TIVE ABUSE PROVISIONS TO ANY PROVIDER OF  
20 SERVICES OR OTHER ENTITY PROVIDING LONG-TERM  
21 CARE SERVICES

“SEC. 1897. The requirements of subsections (b)(8) and (e)(6) of section 1819 shall apply to any provider of services or any other entity that is eligible to be paid under this title for providing long-term care services to an individual entitled to benefits under part A or enrolled under

1 part B (including an individual provided with a  
2 Medicare+Choice plan offered by a Medicare+Choice or-  
3 ganization under part C).”.

4 (d) REIMBURSEMENT OF REASONABLE COSTS FOR  
5 BACKGROUND CHECKS.—The Secretary of Health and  
6 Human Services shall factor into any payment system  
7 under titles XVIII and XIX of the Social Security Act the  
8 reasonable costs of the requirements of sections  
9 1819(b)(8) and 1919(b)(8) of such Act, as added by this  
10 section, incurred by any entity subject to such require-  
11 ments.

12 **SEC. 3. INCLUSION OF ABUSIVE NURSING FACILITY WORK-**  
13 **ERS IN THE DATABASE ESTABLISHED AS**  
14 **PART OF NATIONAL HEALTH CARE FRAUD**  
15 **AND ABUSE DATA COLLECTION PROGRAM.**

16 (a) INCLUSION OF ABUSIVE ACTS WITHIN A LONG-  
17 TERM CARE FACILITY.—Section 1128E(g)(1)(A) of the  
18 Social Security Act (42 U.S.C. 1320a-7e(g)(1)(A)) is  
19 amended—

20 (1) by redesignating clause (v) as clause (vi);  
21 and

22 (2) by inserting after clause (iv), the following:  
23 “(v) A finding of abuse or neglect of  
24 a patient or a resident of a long-term care

1 facility, or misappropriation of such a pa-  
2 tient's or resident's property.”.

(b) COVERAGE OF LONG-TERM CARE FACILITY EMPLOYEES.—Section 1128E(g)(2) of the Social Security Act (42 U.S.C. 1320a-7e(g)(2)) is amended by inserting “, and includes any individual of a long-term care facility (other than any volunteer) that has direct access to a patient or resident of such a facility under an employment or other contract, or both, with the facility (including individuals who are licensed or certified by the State to provide services at the facility, and nonlicensed individuals, as defined by the Secretary, providing services at the facility, including nurse assistants, nurse aides, home health aides, and personal care workers and attendants)” before the period.

16 (c) REPORTING BY LONG-TERM CARE FACILITIES.—

1       (d) ACCESS TO REPORTED INFORMATION.—Section  
2 1128E(d)(1) of the Social Security Act (42 U.S.C. 1320a–  
3 7e(d)(1)) is amended by striking “and health plans” and  
4 inserting “, health plans, and long-term care facilities”.

5       (e) MANDATORY CHECK OF DATABASE BY LONG-  
6 TERM CARE FACILITIES.—Section 1128E(d) of the Social  
7 Security Act (42 U.S.C. 1320a–7e(d)) is amended by add-  
8 ing at the end the following:

9               “(3) MANDATORY CHECK OF DATABASE BY  
10 LONG-TERM CARE FACILITIES.—A long-term care fa-  
11 cility shall check the database maintained under this  
12 section prior to hiring under an employment or other  
13 contract, or both, any individual as an employee of  
14 such a facility who will have direct access to a pa-  
15 tient or resident of the facility (including individuals  
16 who are licensed or certified by the State to provide  
17 services at the facility, and nonlicensed individuals,  
18 as defined by the Secretary, that will provide serv-  
19 ices at the facility, including nurse assistants, nurse  
20 aides, home health aides, and personal care workers  
21 and attendants).”.

22       (f) DEFINITION OF LONG-TERM CARE FACILITY.—  
23 Section 1128E(g) of the Social Security Act (42 U.S.C.  
24 1320a–7e(g)) is amended by adding at the end the fol-  
25 lowing:

1           “(6) LONG-TERM CARE FACILITY.—The term  
2       ‘long-term care facility’ means a skilled nursing fa-  
3       cility (as defined in section 1819(a)), a nursing facil-  
4       ity (as defined in section 1919(a)), a home health  
5       agency, a hospice facility, an intermediate care facil-  
6       ity for the mentally retarded (as defined in section  
7       1905(d)), or any other facility that provides long-  
8       term care services and receives payment for such  
9       services under the medicare program under title  
10      XVIII or the medicaid program under title XIX.”.

11           (g) AUTHORIZATION OF APPROPRIATIONS.—There is  
12       authorized to be appropriated to carry out the amend-  
13       ments made by this section, \$10,200,000 for fiscal year  
14       2000.

15      **SEC. 4. PREVENTION AND TRAINING DEMONSTRATION**  
16           **PROJECT.**

17           (a) ESTABLISHMENT.—The Secretary of Health and  
18       Human Services shall establish a demonstration program  
19       to provide grants to develop information on best practices  
20       in patient abuse prevention training (including behavior  
21       training and interventions) for managers and staff of hos-  
22       pital and health care facilities.

23           (b) ELIGIBILITY.—To be eligible to receive a grant  
24       under subsection (a), an entity shall be a public or private  
25       nonprofit entity and prepare and submit to the Secretary

1 of Health and Human Services an application at such  
2 time, in such manner, and containing such information as  
3 the Secretary may require.

4 (c) USE OF FUNDS.—Amounts received under a  
5 grant under this section shall be used to—

6 (1) examine ways to improve collaboration be-  
7 tween State health care survey and provider certifi-  
8 cation agencies, long-term care ombudsman pro-  
9 grams, the long-term care industry, and local com-  
10 munity members;

11 (2) examine patient care issues relating to regu-  
12 latory oversight, community involvement, and facility  
13 staffing and management with a focus on staff  
14 training, staff stress management, and staff super-  
15 vision;

16 (3) examine the use of patient abuse prevention  
17 training programs by long-term care entities, includ-  
18 ing the training program developed by the National  
19 Association of Attorneys General, and the extent to  
20 which such programs are used; and

21 (4) identify and disseminate best practices for  
22 preventing and reducing patient abuse.

23 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
24 authorized to be appropriated such sums as may be nec-  
25 essary to carry out this section.



## 1 SEC. 5. EFFECTIVE DATE.

2 The provisions of and amendments made by the Act  
3 shall apply, without regard to whether implementing regu-  
4 lations are in effect, to any individual applying for employ-  
5 ment or hired for such employment—

6 (1) by any skilled nursing facility (as defined in  
7 section 1819(a) of the Social Security Act) or any  
8 nursing facility (as defined in section 1919(a) of  
9 such Act), on or after the date which is 6 months  
10 after the date of enactment of this Act,

11 (2) by any home health agency, on or after the  
12 date which is 12 months after such date of enact-  
13 ment, and

14 (3) by any hospice facility, any intermediate  
15 care facility for the mentally retarded (as defined in  
16 section 1905(d) of the Social Security Act), or any  
17 other facility that provides long-term care services  
18 and receives payment for such services under the  
19 medicare program under title XVIII of such Act or  
20 the medicaid program under title XIX of such Act,  
21 on or after the date which is 18 months after such  
22 date of enactment.

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